

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 17521 of 2004

Between:

- 1 Erramsetty Govind Rao S/o.Sri Ramanna
R/o. of Kedarilanka Kapileswarapuram, Mandal, East Godavari District.
- 2 Bairisetty Venkateswara Rao S/o.Sri Veeranna
R/o. of Kedarilanka Kapileswarapuram, Mandal, East Godavari District.
- 3 Saladi Ramkrishna S/o.Sri Somi Reddy
R/o.Kothapeta Village and Mandal, East Godavari District.

..... PETITIONERS

AND

- 1 State of Andhra Pradesh rep. by its Principal Secretary Government, Industries and Commerce Department
Secretariat, Saifabad, Hyderabad.
- 2 District Level Sand Auction Committee East Godavari District, Kakinada rep. by The District Panchayat Officer-Cum-Member-Convenor.
- 3 District Collector and Magistrate Collectorate, East Godavari Kakinada.
- 4 The Mandal Revenue Officer Kapileshwarapuram Mandalam
Kapileshwarapuram, East Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction, more particularly one in the nature of a writ of Mandamus; Direct the respondents not to put to public auction of lease hold rights for quarrying the sand in Reach No.25 of Gowthami Right Bank between Kms 27/0 to 31/0 with Ramp at Kms. 30/4-30/6 pursuant to the Notification No.3756.2004 , Form-A/Rule 9-C, dated 14.9.2004 as the minor mineral is situate beyond the lands in Survey Nos.610,611, 612,466 and 467 of Kedarilanka Village of Kapileswarapuram Mandal, East Godavari District which are zirayati lands.

Counsel for the Petitioner : MR. NUTY RAM MOHAN RAO

Counsel for the Respondents : GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.17521 OF 2004

ORDER :

The petitioners claim to be the owners of the land situated in Sy.No.610, 611, 612, 466 and 467 of Kedarilanka village of Kapileswarapuram Mandal, East Godavari District. It is claimed that the said lands are zirayati and cultivable lands wherein the petitioners have been raising crops.

This writ petition is filed seeking a Writ of Mandamus directing the respondents not to put to public auction the leasehold rights for quarrying the sand in Reach No.25 of Gauthami Right Bank River between KM 27/0 to 31/0 pursuant to the notification dated 14-09-2004. The petitioners allege that the sand bearing area in Reach No.25 of Gauthami River bank is inaccessible since the agricultural lands belonging to the petitioners are situated between the sand bearing mineral source and the motorable road. Consequently, the auction purchasers / lessees of the said Reach have been trying to illegally intrude themselves through the cultivable lands belonging to the petitioners. The petitioners have conceded to the demand for transportation of the mineral through their lands during the lease year 2003-04 since the lease was granted in favour of one Sri Gurrula Brahmaiah who is a close relative of one of the petitioners. However, under the impugned notification if a third party is granted the leasehold rights, the petitioners will be put to loss and suffering and therefore they contend that unless a ramp or pathway in the Government land is provided, the leasehold rights in respect of the Reach No.25 cannot be put to auction. Hence, this writ petition.

On behalf of the respondents, the District Panchayat Officer, East Godavari District, Kakinada filed a counter-affidavit stating that the Mandal Revenue Officer, Kapileswarapuram inspected the area along with the Mandal Deputy Surveyor and inquired with the petitioners and submitted a report dated 19-10-2004 stating that the land in Sy.Nos.612 and 613 belong to the Government and that the same is classified as Puntha Poramboke. It is also stated that the writ petitioners themselves permitted the successful bidder for the previous year who happened to be a close relative of the writ petitioners. It is also pleaded that there are Government lands in the vicinity in Sy.Nos.612 and 613 and as per the conditions of the auction, it is for the bidder to form a proper passage to carry the sand. The allegation of the petitioners that the respondents failed to provide the pathway has been denied and it is stated that in the auction held in pursuance of the impugned notification one Y.Jagajjivana Rao was declared as the highest bidder and it is for him either to form a track to the Government land in Sy.Nos.612 and 613 or to enter into an agreement with the writ petitioners for transporting the sand through their land as was done during the previous years.

The District Panchayat Officer has filed an additional counter-affidavit reiterating that the ramp which was notified in the auction notification passes through RS.Nos.612 and 613 which is Puntha Poramboke. It is also stated that there is a clear passage for transportation of the sand from the ramp point which was notified in the previous year as well as in the impugned notification and the same passes through SY.Nos.612 and 613 i.e, Puntha Poramboke.

The petitioners filed an affidavit in Reply disputing the stand taken by the respondents that the ramp is passing through the Government lands and stating that since as per the report of the Mandal Revenue Officer, dated 19-10-2004 it is clear that the lands in Sy.Nos.612 and 613 were eroded long back and it is not feasible to form roads in the said lands.

I have heard the learned Counsel for the petitioners and the learned Government Pleader for Panchayat Raj appearing for the respondents and perused the material on record.

It is to be noted that the writ petition was filed on 28-09-2004 aggrieved by the notification dated 14-09-2004 whereunder the leasehold rights of Reach No.25 were put to public auction. In the said notification, the said Reach was shown running from KM 27/0 to 31/0 and the ramp was shown from KM 30/4 to 30/6 of Kothapet – Kedarilanka.

This Court by order dated 29-09-2004 while granting time to the respondents to file the counter-affidavit ordered that the respondents shall consider the objections raised by the petitioners before taking any decision for issuing a fresh notification in respect of Reach No.25. Subsequently, the respondents issued fresh notification dated 22-11-2004 in which the Reach No.25 has again been notified with Ramp point at KM 30/4 to 30/6. The petitioners contend that the said Ramp is passing through their agricultural lands.

As can be seen from the material placed before this Court along with the counter-affidavit, the Mandal Revenue Officer, Kapileswarapuram inspected the area in question along with the Mandal Deputy Surveyor and after making necessary enquiry submitted a report dated 19-10-2004. The said report shows that the passage leading to sand ramp is existing in Sy.No.469 and 466 and that the land to an extent of Ac.0.75 cents situated in Sy.No.499 is zirayathi land and belongs to the 1st petitioner while the land in RS.No.466 to an extent of Ac.16-51 cents which is also a zirayati land belongs to various other ryots. The vehicles are passing through the said passage for transporting the sand from the Godavari River. As per the statement of the petitioners recorded by the Mandal Revenue Officer, the said passage was formed by one Saladi Swami Naidu, lessee of the previous year with the consent of the 1st petitioner and other ryots. The 1st petitioner and other ryots stated they are being paid a share out of the profits by the said Swami Naidu. The Mandal Revenue Officer also observed that so far as the formation of passage through alternative source is concerned, though Sy.Nos.612 & 613 are classified as Puntha Poramboke, the said land is eroded and not feasible for formation of road in about three furlongs to reach the sand ramps and that it involves lacs of rupees to level the edge for formation of the road.

In the light of the said report, it is clear that it is not as if that there is no alternative source at all for formation of a passage through Sy.Nos.612 & 613. May be that it involves huge expenditure, but as rightly contended by the learned Government Pleader, it is for the successful bidder to form such passage. Admittedly, the lessee for the previous year Saladi Swami Naidu having entered into an agreement with the petitioner and other ryots formed a passage through their zirayathi lands. However, there is nothing on record to show that the respondents have notified the lease together with the said passage. On the other hand, the Ramp shown in the notification dated 14-09-2004 as well as the fresh notification dated 22-11-2004 passes through R.S.Nos.612 & 613 which is a Government land. The specific case of the respondents is that it is for the highest bidder either to form a track through the Government land in Sy.Nos.612 and 613 or to enter into an agreement with the ryots of Zirayati lands to form an alternative passage. In the circumstances, the objection raised by the petitioners is misconceived and the respondents have rightly rejected the same.

The Writ Petition is devoid of any merit and the same is accordingly dismissed. However, it is made clear that the respondents shall ensure that the successful bidder in pursuance of the notification dated 22-11-2004 in respect of Reach No.25 will not form any passage through the lands of the petitioners nor make use of the passage already in existence in the said lands for transportation of the sand.

The Writ Petition is accordingly dismissed. No costs.

Needless to mention that the interim order granted on 07-12-2004 shall stand vacated.

28th February, 2005.

gbs

To

1 The Principal Secretary Government, State of Andhra Pradesh, Industries and Commerce Department Secretariat, Saifabad, Hyderabad.

2 The District Panchayat Officer-Cum-Member-Convenor, District Level Sand Auction Committee East Godavari District, Kakinada.

3 The District Collector and Magistrate Collectorate, East Godavari Kakinada.

4 The Mandal Revenue Officer Kapileshwarapuram Mandalam
 Kapileshwarapuram, East Godavari District.

5. Two CCs to G.P. for Panchayat Raj & Rural Development, High Court of AP Bldgs, Hyderabad (OUT).

6. Two CD copies.